Disseisin, however, is an entry into any lands or tenements and an ouster of him who has the freehold, Litt. sec. 279, and always implies a wrong. Co. Litt. 153 b. The theory of the common law was that seisin passed from the party ousted to the usurper. Litt. sec. 385, 387. This is apparent from the wording of the Stat. 32 Hen. VIII c. 33: "Where divers persons have heretofore, by strength, and without title, entered into lands, and wrongfully disseised the rightful owner, and so being *seised by disseisin*, have thereof died seized, etc." See also *Taylor* v. *Horde* (1757) 1 Burr. 60, 107, 108. Seisin is a possession claiming an estate of freehold. *Bearce* v. *Jackson* (1808) 4 Mass. 408; *Towle* v. *Ayer* (1835) 8 N. H. 57. It would therefore seem that there can be no disseisin in fact unless the usurper claims the freehold. *Beale* v. *Hite* (Or. 1899) 57 Pac. 322. Where possession is accompanied by a claim of title generally, which may be by conduct, the question is open to the presumption of any title consistent with the facts and circumstances in evidence. But where a party occupies land under a certain claim he cannot abandon such claim and set up a different interest, unless he can show his title and that he was under some mistake of law in relation to it. *Jackson* v. *Porter* (U. S. 1825) 1 Paine 457, 467, 470. The defendants here are therefore bound by their admission, and cannot rely on their acts separated from such admission.

Could the defendants' entry have gained seisin for the state? The law as to livery of seisin by attorney, 2 Bl. Com. (Lewis's Ed.) 315, n. 79, 316, does not apply to disseisin, where there is manifestly no livery, but an ouster. In disseisin by election, a person could consider himself as ousted by the servant of a third party, *Doe* v. *Stradling* (1817) 2 Starkie's N. P. Cases 187; but this was solely for the sake of the remedy. *Taylor* v. *Horde* (1757) 1 Burr 60, 110, 111. In the case of lands descended, actual seisin could be acquired by entry by attorney or by lessee. 2 Bl. Com. (Lewis's Ed.) 209, n. 24. So with an entry to avoid a fine. *Lord Audley* v. *Pollard* (1597) Cro. Eliz. 561. But in such case the principal could have himself entered rightfully. In *Price* v. *Jackson* (1884) 91 N. C. 11, there is a dictum that adverse possession may begin by entry of attorney, and *Serle de Lanlarazon's Case* (1302) Y. B. 3d Ed. I (Rolls Series) 126, Wambaugh's Cases on Agency 986 seems authority for the same view. But adopting this view, there is still the necessity of ratification in circumstances like those of the principal case.

Statutory Liability of Shareholder to Corporation Creditors.—One becoming a stockholder in a corporation enters upon a threefold relationship, first toward the corporation, second toward the other stockholders and third toward the creditors of the corporation. His obligation to the corporation to pay the amount of his subscription is obviously based upon a contract, either express or implied in the fact of taking stock. His obligation to the other stockholders to bear his proportionate burden seems likewise to be contractual, because his contract of subscription, though in form with the corporation, is, in fact, with the shareholders, they being the real parties in interest. *Upton* v. *Englehart* (1874) 3 Dill. 497; Morawetz, Private Corporations, §§ 24, 302, 316. But the nature of his obligation to

creditors of the bank to pay an assessment equal to the par value of his stock in the event of the bank's insolvency, is not so well settled. By the weight of authority this obligation also is contractual. It is held that his act in taking stock implies a promise to assume this liability. On this theory it has been held that upon the death of a stockholder during the pendency of an action to recover the assessment. the action survives against his personal representative. *Richmond* v. *Irons* (1886) 121 U. S. 27, 55; *Cochran* v. *Wiechers* (1890) 119 N. Y. 399. That the action, when arising under a state statute, is transitory. *Flash* v. *Conn.* (1883) 109 U. S. 371; *Pulsifer* v. *Greene* (1902) 96 Me. 438. That the action is barred by a statute of limitations as to "contracts," *Carroll* v. *Green* (1875) 92 U. S. 509. That the repeal of a statute imposing double liability is unconstitutional as impairing the obligation of a contract. *Hawthorne* v. *Calef* (1864) 2 Wall. 10. See also Clark & Marshall, Private Corporations, § 809 and cases cited. On the other hand the stockholder's liability has been held to be one imposed by law or quasi-contractual in its nature. The theory is that there is no actual intention to contract, and therefore the obligation is purely statutory. This view was first expressed by Judge STORY in *Bullard* v. *Bell* (1817) 1 Mason U. S. 243, 288, 299, and has been followed in *Brown* v. *Eastern Slate Co.* (1883) 134 Mass. 590. Accordingly, it has been held that such an action is not on a contract "within the meaning of the statute of limitations," *Lane* v. *Morris* (1851) 10 Ga. 162, and that the action is not transitory. *Nat. Bank* v. *Farnum* (1898) 20 R. I. 466; *Crippen* v. *Laighton* (1899) 69 N. H. 540.

A recent decision of the Supreme Court holding that the stockholders' liability is not "an action upon a contract or liability, express or implied," within the meaning of the statute of limitations definitely adopts the latter of these theories. *McClain* v. *Rankin* (1905) 25 Sup. Ct 410. Although the prevailing opinion attempts, by distinguishing the facts, to point out that it does not necessarily overrule any of the earlier cases in the same court, in fact it overturns completely the theory upon which they were based, and marks an entire change in the court's attitude. The two views rest upon different answers to the difficult question of fact, as to the state of mind of one subscribing for national bank stock. If he intends to contract with the creditors of the bank or with the state just as a passenger or shipper does when accepting a ticket or bill of lading, his liability is contractual. On the other hand, if he intends merely to secure a certain amount of control over the bank and derive profit therefrom, obeying the National Bank Act just as he does other laws, his liability is quasi-contractual. The latter is the doctrine of the principal case and would seem to have much to commend it.

By employing this theory of the nature of the stockholders' liability to creditors, it becomes possible to support the result reached in those cases where a court of the incorporating jurisdiction refuses to enforce the double liability imposed upon the stockholders by a foreign jurisdiction where the corporation was doing business. *Risdon Iron Wks.* v. *Furness* [1905] 1 K. B. 304. Whereas if the action were brought in a court of the foreign jurisdiction the stockholder should properly be held. *Pinney* v. *Nelson* (1901) 183 U. S. 144.

ACQUISITION OF HIGHWAYS BY THE PUBLIC.—The public may acquire a highway by dedication or by a statutory method; but there is a marked tendency in the American Courts, illustrated by a case lately decided in Washington, to apply the doctrine of prescription to the acquisition of highways by the public. *Watson* v. *Board* (Wash. 1905) 80 Pac. 201. But prescription strictly presupposes a grant, and the public, being an unincorporated, indefinite body, as distinguished from a municipal corporation, is incapable of taking by grant. *Atty. Gen.* v. *Antrobus* L. R. [1905] 2 Ch. 188; *State* v. *Ry* (1876), 45 Iowa 139; Dillon Mun. Corps. 737; Angel Highways §131. It is suggested that the municipal corporation takes as trustee for the public, Elliot Roads 155; but this involves user by a cestui establishing a grant to a trustee, and would seem a fanciful explanation. For while a grant to a municipal corporation of highway rights is a legal possibility, it seldom occurs, therefore there would be no presumption of fact that it had, and certainly no presumption of law.

Thus the cases that adopt prescription, in its strict sense, *Town* v. *McClintock* (1894) 150 Ill. 129; *Colburn* v. *San Mateo County* (1896) 75 Fed. 520; *Cohoes* v. *Ry.* (1892) 134 N. Y. 397, would seem to be wrong. But the term is used also as equivalent to long user, presupposing the legal establishment of the highway, *Commonwealth* v. *Coupe* (1880) 128 Mass. 63; to user evidencing a dedication, *Howard* v. *State* (1889) 47 Ark. 431; to user for the period necessary to bar actions of ejectment, *Nichols* v. *State* (1883) 89 Ind. 298; Dillon, Mun. Corp. 737; *Town* v. *Preston* (1862) 27 Ill. 413. But the action to try the right in a highway, the fee being in the abutting owner, is not ejectment but trespass, to which prescription may not be pleaded, as the presumption of a lost grant would not help the public. The theory of the proper plea, whatever its wording, would be, that the highway had been legally established, that the record had been lost, and that there had been a continuous and adverse user—which user would be evidence from which such legal establishment would be inferred. We have shown that such legal establishment could not be by grant to the public; it could therefore only have been by dedication or by establishment according to a statute, *Post* v. *Pearsall* (1839) 22 Wend. 424, 444.

Now dedication is dependent on the proof of the *animus dedicandi*, *Fox* v. *Virgin* (1879) 5 Ill. App. 515; *Irwin* v. *Dixon* (1850) 9 How. 10. This proof may be of an express intention or of facts from which an intention may be inferred, *Fox* v. *Virgin*, supra, *Hyde* v. *Town of Logan* (1877) 87 Ill. 64; user with knowledge and acquiescence of the abutting owner is competent evidence, *Ely* v. *Parsons* (1887) 55 Conn. 83; *Valentine* v. *Boston* (1839) 22 Pick. 75. User for a specified period has in some states become conclusive evidence, *Schwerdtle* v. *County of Placer* (1895) 108 Cal. 589. The reason for the conclusive presumption is that one who has allowed the public to use a way for twenty years is estopped to deny a dedication, *Campbell* v. *O'Brien* (1881) 75 Ind. 222. The objection to such conclusive presumption of dedication in case of incapacitated persons is no stronger than on the theory of prescription, and the presumption may be supported on the ground of estoppel, *Elmendorf* v. *Lockwood*

(1874) 57 N. Y. 322; *Pattison* v. *Lawrence* (1878) 90 Ill. 174. It is therefore submitted that the public may not acquire a highway by prescription, and that the loose employment of the word means no more than user, as evidence of dedication, *State* v. *Ry.*, supra; *Post* v. *Pearsall*, supra, or as evidence of the legal establishment of the highway by statutory methods, *Commonwealth* v. *Coupe*, supra.

Bills to Remove Cloud on Title.—It seems highly probable that the early cases commonly cited as examples of the jurisdiction of equity to order the cancellation of instruments which were void at law were instances where the defense to the instrument was originally cognizable only in equity and where the admission of such defenses by the law courts was regarded as a distinct encroachment upon a field reserved for equity. When the jurisdiction of the law courts was so enlarged by judicial interpretation as to permit the defenses of fraud and illegality, which were formerly not admissible at law, 2 Poll. & Mait. 536; *Brook* v. *King* (1588). 1 Leon, 73, and to allow suits upon a lost bond, the courts of chancery refused to be ousted of a jurisdiction understood to be exclusively their own and continued to grant relief as before. *Atkinson* v. *Leonard* (1791) 3 Brown C. C. 218; *St. John* v. *St. John* (1805) 11 Ves. Jr. 526; *Jackman* v. *Mitchell* (1807) 13 Ves. Jr. 581. The present theory of the power of equity to order the cancellation of an outstanding instrument void at law, where the title to land, was involved would seem to derive its origin from a decision of Lord Eldon in *Hayward* v. *Dimsdale* (1810) 17 Ves. Jr. 111; see also *Bromley* v. *Holland* (1802) 7 Ves. Jr. 21, expressly repudiating the contrary view held in prior cases and justifying the interference of chancery on the right of a landowner to the full and unimpaired enjoyment of his property. *Ryan* v. *McNath* (1789) 3 Brown C. C. 14; *Franco* v. *Bolton* (1797) 3 Ves. Jr. 368; *Gray* v. *Mathias* (1800) 5 Ves. Jr. 286.

Modern jurisdictions while uniformly adopting this suggestion of Lord Eldon and recognizing the power of equity to remove a cloud on title, differ widely as to what constitutes such a cloud. The majority of the American courts have followed the lead of New York in holding that a bill will not lie where the instrument complained of is void on its face or because of the omission of preliminary proceedings which any one claiming under it would be required to prove. *Scott* v. *Onderdonk* (1856) 14 N. Y. 9; *Pixley* v. *Higgins* (1860) 15 Cal. 128. The outstanding instrument must of itself or in connection with extrinsic facts constitute a *prima facie* case. *Thompson* v. *Etowah Iron Co.* (1893) 91 Ga. 538. On the other hand the Supreme Court of Texas has held that notwithstanding an instrument be void on its face, the court has power which it must exercise, to cancel the same. *Day Co.* v. *The State* (1887) 68 Tex. 526. A recent case in Michigan, *Flint Land Co.* v. *Fochtman* (1905) 103 N. W. 813, followed the Texas rule and entertained a bill to remove cloud where the allegations showed an absolute title in the complainant and a complete barring of the equitable claim of the defendant. The object of the Court in thus restoring the complainant to the enjoyment of the full marketability of his land by allaying the fears of prospective vendees is certainly more in accord with the spirit of equitable relief in which the